

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

United States of America

v.

Aticha Jittaphol

No. 21-CR-10270-MLW

**DEFENDANT'S MOTION FOR PRE-PLEA PRESENTENCE REPORT
AND FOR CONTINUANCE
Assented to by Government**

Aticha Jittaphol hereby moves the Court to order a complete pre-plea Presentence Report to be prepared. The defendant moves the Court to continue a hearing set for January 28th, at which the parties were to address the justification for the plea agreement, for thirty days, or until Probation completes a pre-plea Presentence Report, including an interview of Ms. Jittaphol, whichever is longer. And the defendant moves to continue the filing date for the parties to submit memoranda in support of the Court's acceptance of the plea agreement until one week prior to the hearing. The government assents.

There is no dispute regarding guidelines calculations. However, a Presentence Report may be of significant assistance in the Court's assessment of the appropriateness of the plea agreement for several reasons.

The Court expressed concern that Ms. Jittaphol was not taking her criminal conduct or the conditions of probation seriously, and that the plea agreement could further this cavalier attitude. The defendant believes that a Presentence Report would be useful in addressing this concern. A Report would provide the Court with a greater understanding of Ms. Jittaphol's background, character,

struggle with transgender issues, and methamphetamine addiction.

The Court expressed concern over whether Ms. Jittaphol's failure to go into long-term in-patient residential drug treatment was an indication that the plea agreement failed to convey to her the seriousness of her offense and supervised release. A Presentence Report could provide useful information concerning her reasons for declining further in-patient treatment, her commitment to sobriety, her readiness to follow the Court's instructions, and whether her failure to enter additional in-patient care reflects a disregard of her obligations. A Report could help explain why Ms. Jittaphol feels confident that she can remain sober and avoid relapse without further in-patient treatment.

The delay that would result from allowing a Presentence Report to be prepared now would allow additional time for Ms. Jittaphol to be drug tested, and to demonstrate to Probation and the Court that her rejection of further in-patient treatment was not an act of defiance or disregard, but an accurate assessment of her treatment needs.

The issue of drug treatment and Ms. Jittaphol's failure to continue in-patient treatment is connected to the issue of the appropriateness of the plea agreement. Counsel seeks additional time to confer with Probation about eliminating a condition of in-patient residential treatment. There are objective criteria that are consistent with the applicable standard of care for determining when in-patient residential drug treatment is appropriate. Counsel seeks some

additional time to review these criteria with Probation, and to allow Probation to confer with the Hope Center regarding their clinical assessment.

Finally, the defendant seeks a continuance to provide the Court with the sort of information concerning who she is that would usually be provided at the time of sentencing. In the routine case, letters from friends or family, evidence of community service, and other materials that provide the Court with a better understanding of the defendant, are provided shortly before sentencing, not at the time of a change of plea. But in this case, the decision to accept or reject the “C” plea agreement essentially substitutes for the discretion usually exercised at sentencing. Consequently, it is important for the Court to have these materials when deciding whether to accept the plea agreement. The defendant seeks additional time to put these materials together.

This same reasoning supports preparation of a complete pre-plea Presentence Report. Usually, the Court considers the Report at the time of sentencing. But here, the Court’s decision concerning whether to accept the plea agreement essentially substitutes for sentencing, and the Court should have the benefit of the Presentence Report when making this decision.

For these reasons, the Court should order that a pre-plea Presentence Report be prepared, and further order that a hearing on whether the Court should accept the plea agreement be continued for a period of thirty days or until a Presentence Report is completed, and that the parties should submit memoranda no later than one week prior to the hearing.

ATTICHA JITTAPHOL

By her Attorney,

/s/ Keith Halpern

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CERTIFICATE OF SERVICE

I hereby certify that this document, filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on January 21, 2022.

/s/ Keith Halpern